IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 798 OF 2001

Vilas Dhanapal Nille & Ors. ..Appellants

versus

State of Maharashtra & Ors. ..Respondents

Mr. A. A. Kumbhakoni with A. P. Kulkarni for the Appellants.

Mr. B. R. Patil, A.G.P. for the Respondent Nos. 1 and 2.

Mr. A. Y. Sakhare, Sr. Counsel i/b. Ms. V. Palav for the Respondent No.3.

CORAM : D. G. DESHPANDE,J.

DATE : 23RD FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the parties.

2. The Institution for which the acquisition was made is an Educational Institution. About 600 meters of land, to be exact 595 sq. meters of the land of the appellants - claimants was acquired at the instance of respondent No.3. The respondent no.3 was running a school in that area and over that land since 1952. The land was reserved as such in

the Town Planning Scheme. SLAO awarded Rs.125/- per sq. meter as compensation. Being aggrieved by that the claimants filed a Reference claiming Rs.1,700/- per sq. meter. Reference Court awarded Rs.173/- per sq. meter. Hence this Appeal.

3. Counsel for the appellants strenuously urged that he has filed six sale instances but as per paragraphs 16 of the judgment even though sale instances disclosed price ranging between Rs.255/- per sq. meter to Rs.300/- per sq. meter, the Reference Court took into consideration the lowest price of Rs.255/- per sq. meter and then out of that deducted 40% of the amount on the ground that the land was tenanted and therefore according to the appellants the price fixed by the Reference Court at Rs.173/- per sq. meter cannot be considered as an adequate price or market price. He also contended that acquired land was very much in the heart of Kolhapur city, it has a tremendous business potentiality and therefore price demanded by the claimants was most reasonable.

4. On the other hand counsel for respondent No.3 contended that since 1952 the school was being run by the respondent No.3 i.e. the respondent No.3 was the tenant of the land and because of these factors, namely, respondent Nos.3’s right as a

tenant, and, secondly, its activity of running school, and thirdly, reservation of this area in the Town Planning Scheme, the appellants - claimants could not have put this property to any other use. They could not have been able to sell it nor could there be any prospective buyer for this property, Therefore, according to him the compensation awarded was adequate.

5. From the plea raised by the respondent No.3, it is clear that the claimants could not have sold the property in open market, firstly, because the property was a tenanted, secondly, area was reserved for the purpose of respondent no.3 and thirdly, the respondent No.3 was running school from 1952. However, while fixing the compensation as per paragraph 16, the lower court took the lowest price as the basis. It was a matter of record that the price disclosed in the sale instances was ranging from Rs.255/- to Rs.300/- per sq. meter and for no reason the court accepted the lowest price and then deducted 40% from the said price on the ground that the property was tenanted.

6. I do not find any justification for doing so. In the circumstances and looking to the location of the property atleast the price at Rs.300/- per sq. meter as disclosed by the sale

instances should have been accepted and secondly deduction of 40% on account of the land being tenanted is also on the higher side. 25% deduction on that count would be proper. Therefore the appeal is required to be partly allowed. Compensation will have to be fixed at Rs.300/- per sq. meter and 25% is to be deducted therefrom, therefore price comes to Rs.225/- per sq. meter.

7. In the result, I pass the following order:

ORDER

Appeal is partly allowed.

. Judgment of the Reference Court is modified. The claimants will be entitled to compensation at the rate of Rs.225/- per sq. meter for the acquired land. Claimants will be entitled to recover difference from the respondents with 9% interest on the enhanced amount and proportionate addition of solatium. No order as to costs.

23.02.2005 (D.G. DESHPANDE, J.)